

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LAWRENCE RODRIGUEZ, STEVEN J.
DURAN, ROSEMARY NEAL, JASON
BROWN and GREG MIERA, On behalf of
themselves and other Present and former City
employees,

Plaintiffs,

No. CIV 07-00901 JA/ACT

v.

CITY OF ALBUQUERQUE,

Defendant.

MOTION FOR SUMMARY JUDGMENT BASED ON
RES JUDICATA OR COLLATERAL ESTOPPEL

Defendant, City of Albuquerque (“City”), by and through its attorneys, Seyfarth Shaw LLP, and pursuant to Fed. R. Civ. P. 56(c) hereby moves for partial summary judgment on the basis of res judicata or collateral estoppel.

A Memorandum of Law (“Memorandum”) setting forth the grounds for the City’s Motion is filed with this Motion.

Counsel for Plaintiffs has been consulted and Plaintiffs do not concur in this Motion.

For the reasons explained in the City’s Memorandum, the City respectfully requests that the Court grant its motion for partial summary judgment and dismiss Plaintiffs’ complaint in its entirety. The doctrine of res judicata, or alternatively collateral estoppel, bars relitigation of Plaintiffs’ claims.

Plaintiffs allege that the City has violated the Fair Labor Standards Act by not paying them the overtime wages to which they are entitled. Specifically, they allege they have a right to recover for unpaid overtime wages owed to them for hours worked in excess of their normal 40-

hour or other regular work week. They also allege that the City fails to include all properly applicable “other” compensation in calculating the “regular rate of pay” and that the City is incorrectly taking “credits” or “offsets” against overtime pay.

Each of these claims was previously litigated, tried to this Court, and decided in favor of the City in another case, *Chavez v. City of Albuquerque*, No. 02-0562 JH/ACT (D. N.M.). The *Chavez* Court decided the exact same claims brought in this case, was between the same parties, and was in fact brought by the same Plaintiffs’ counsel. As explained in the City’s memorandum, all elements of collateral estoppel or res judicata are met and Plaintiffs’ are barred from relitigating their claims. The City respectfully requests that the Court grant its motion for summary judgment, dismissing Plaintiffs’ complaint in its entirety.

Respectfully Submitted,

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/s/ Electronically signed
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I HEREBY CERTIFY that on the 6th day of November, 2008, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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